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Attorneys for Defendant  
JEANS CITY USA, INC.

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LEVI STRAUSS & CO.,  
  
Plaintiff,  
  
v.  
  
JEANS CITY USA, INC.,  
  
Defendant.

Case No. C 08-01639 WHA

**JOINT CASE MANAGEMENT  
STATEMENT AND [PROPOSED]  
ORDER**

**CMC DATE: July 24, 2008**  
**CMC TIME: 2:30 p.m.**

Plaintiff Levi Strauss & Co. ("LS&CO.") and defendant Jeans City USA, Inc. ("Jeans City") jointly submit this Case Management Statement and Proposed Order.

1           **1.       Jurisdiction and Service.**

2           LS&CO.'s first, second and third claims arise under the Lanham Act. This Court has  
3 subject matter jurisdiction over those claims pursuant to 28 U.S.C. §§ 1331, 1338(a) and 1338(b)  
4 and 15 U.S.C. §1121, and supplemental jurisdiction over LS&CO.'s state law claims pursuant to  
5 28 U.S.C. §1367. No issue exists as to personal jurisdiction or venue, and no parties remain to  
6 be served.

7           **2.       Facts and Bases for Claims and Defenses.**

8           Plaintiff's Claims:

9           LS&CO. is a Delaware corporation which has its principal place of business in San  
10 Francisco, California. LS&CO. is the sole owner of the Arcuate Stitching Design Trademark  
11 ("Arcuate Trademark"), which LS&CO. has used continuously in interstate commerce since  
12 1873 and which is the oldest apparel trademark still in use in the United States. The Arcuate  
13 Trademark is federally registered and incontestable. Examples of LS&CO.'s use of the Arcuate  
14 Trademark on jeans are attached as Exhibit A to the Complaint, and LS&CO.'s federal and  
15 California registrations for the Arcuate Trademark are attached to the Complaint as Exhibit B.  
16 LS&CO. is also the sole owner of the Tab Device Trademark ("Tab trademark"), which  
17 LS&CO. has used continuously in interstate commerce since 1936. The Tab Trademark is  
18 federally registered and is incontestable. Examples of LS&CO.'s use of the Tab Trademark on  
19 jeans are attached to Exhibit C to the Complaint and LS&CO.'s federal and California  
20 registrations for the Tab Trademark are attached to the Complaint as Exhibit D.

21           Jeans City USA, Inc. is a Florida corporation with its principal place of business at 8030  
22 W. 26th Ave., Hialeah, Florida 33016. Jeans City manufactures and sells a line of clothing,  
23 including jeans. These jeans are sold on at least the Jeans City website ([www.jeanscityusa.com](http://www.jeanscityusa.com))  
24 and in various states throughout the United States. Jeans City has distributed jeans that display  
25 stitching and/or tab designs that LS&CO. believes are confusingly similar to LS&CO.'s Arcuate  
26 and Tab Trademarks and violate LS&CO.'s rights in its marks. LS&CO.'s complaint states  
27 claims against Jeans City for trademark infringement, dilution and unfair competition under  
28 federal and California law.

1           Defendant's Defenses:

2           Jeans City denies all allegations in LS&CO.'s Complaint. Jeans City does not have the  
3 resources to take-on LS&CO.'s apparel empire. In Jeans City's view, LS&CO. has already  
4 obtained a fair remedy—Jeans City has permanently ceased manufacturing and selling any  
5 product bearing the tabs and/or stitching designs at issue in this litigation, and as a remedial  
6 measure, did so promptly after being served with LS&CO.'s Complaint. It is Jeans City's  
7 position that prior to being served with LS&CO.'s lawsuit, it never received notice from  
8 LS&CO. indicating that it thought Jeans City was infringing LS&CO.'s trademarks. If it had,  
9 Jeans City believes that this lawsuit could have been avoided. Without admitting any liability,  
10 Jeans City wants this litigation to end, and believes that an equitable outcome has been  
11 achieved. In the event that LS&CO. proceeds to litigate this case, Jeans City will defend on the  
12 merits, and believes that its affirmative defenses will provide an independent basis to dismiss  
13 LS&CO.'s Complaint.

14           **3. Issues in Dispute.**

15           The issues (both factual and legal) set forth below are not meant to be final or  
16 exhaustive, and the parties reserve their rights to reformulate these issues or include other  
17 appropriate issues as they develop or become known to the parties through the course of  
18 discovery and investigation. Furthermore, the characterization of an issue as "factual" or "legal"  
19 is not necessarily a concession that it is not the other or both.

20           Factual Issues:

21           a.       Whether Jeans City's manufacture, distribution, and/or sale of products  
22 bearing the stitching and/or tab designs at issue is likely to cause confusion, mistake or  
23 deception among consumers and potential consumers.

24           b.       Whether Jeans City's manufacture, distribution, and/or sale of products  
25 bearing the stitching and/or tab designs at issue dilutes or is likely to dilute LS&CO.'s Arcuate  
26 and/or Tab Trademark.

27       ///

28       ///

1 c. Whether and to what extent LS&CO. has been damaged by Jeans City's  
2 manufacture, distribution, and/or sale of products bearing the stitching and/or tab designs at  
3 issue.

4 d. Whether the Arcuate and/or Tab Trademarks are famous.

5 e. The amount of profits earned by Jeans City on products bearing the  
6 stitching and/or tab designs at issue.

7 f. Whether LS&CO. failed to give Jeans City notice of infringement and an  
8 opportunity to take corrective measures before LS&CO. filed its Complaint.

9 g. Whether LS&CO. has adequately protected/policed its Arcuate and/or  
10 Tab Trademarks.

11 h. Whether and to what extent LS&CO. has improperly licensed its Arcuate  
12 and/or Tab Trademarks.

13 i. Whether and to what extent pocket stitching designs and tabs similar to  
14 LS&CO.'s trademarks are in common use by third parties unrelated to Jeans City.

15 j. Whether LS&CO. has abandoned or acquiesced in enforcing its Arcuate  
16 and/or Tab Trademarks.

17 k. Whether LS&CO. has allowed its Arcuate and/or Tab Trademarks to be  
18 used to misrepresent the source of its goods or in the connection with which the marks are used.

19 l. Whether LS&CO failed to mitigate any alleged injury or damages.

20 Legal Issues:

21 a. Whether Jeans City's manufacture, distribution, and/or sale of products  
22 bearing the stitching and/or tab designs at issue constitutes infringement and dilution of  
23 LS&CO.'s Arcuate Trademark and/or Tab Trademark and unfair competition under the federal  
24 Lanham Act, 15 U.S.C. § 1051 *et seq.*

25 b. Whether Jeans City's manufacture, distribution, and/or sale of products  
26 bearing the stitching and/or tab designs at issue constitutes trademark infringement and unfair  
27 competition under California common law and/or Cal. Bus. & Prof. Code §§ 14320, 17200 *et*  
28 *seq.*, and dilution of LS&CO.'s Arcuate Trademark and/or Tab Trademark under Cal. Bus. &

1 Prof. Code § 14330.

2 c. Whether LS&CO. is entitled to recovery of Jeans City's profits or a  
3 reasonable royalty on account of the infringement under the federal Lanham Act, 15 U.S.C. §  
4 1117 (a) and/or common law.

5 d. Whether LS&CO.'s Arcuate Trademark and/or Tab Trademark are  
6 enforceable.

7 e. Whether LS&CO.'s Arcuate Trademark and/or Tab Trademark should be  
8 cancelled.

9 f. Whether LS&CO.'s prior conduct precludes its causes of action.

10 g. Whether LS&CO has misused its Arcuate Trademark and/or Tab  
11 Trademarks.

12 h. Whether LS&CO's Arcuate Trademark and/or Tab Trademarks have  
13 become generic.

14 i. If damaged, whether LS&CO. is entitled to a royalty measure of  
15 damages.

16 **4. Motions.**

17 The parties anticipate that they may file dispositive motions, depending on the evidence  
18 that is produced during the discovery process.

19 **5. Amendment of Pleadings.**

20 The parties have agreed to a deadline of October 16, 2008 to amend pleadings.

21 **6. Evidence Preservation.**

22 LS&CO. has taken steps, including the suspension of normal document destruction  
23 programs and placement of a litigation hold for documents, including electronically stored  
24 documents, to preserve evidence relevant to the issues reasonably evident in this action,  
25 including interdiction of any document destruction program and any ongoing erasure of emails,  
26 voice mails and other electronically recorded materials.

27 Jeans City has taken similar preservation measures, including litigation hold notices for  
28 all documents, electronic or otherwise, that may be relevant to this action.

1           **7. Disclosures.**

2           The parties have timely complied with the initial disclosure requirements of  
3 Fed. R. Civ. P. 26.

4           **8. Discovery.**

5           The parties expect to agree upon a stipulation regarding the entry of a protective order  
6 governing documents and information to be disclosed in the course of this litigation.  
7 Thereafter, the parties anticipate exchanging document requests and other written discovery and  
8 cooperating in arranging depositions of pertinent party and non-party witnesses. The parties do  
9 not propose any other changes with regard to the timing, form, or requirement for disclosures  
10 under Fed. R. Civ. P. Rule 26(a). The parties have not agreed to any limitations on the subject  
11 matter of discovery, and are to complete discovery within the time limits to be set by the court.  
12 Should the need arise at a later date to amend these deadlines, they may be modified by  
13 stipulation and order or motion supported by good cause.

14           **9. Class Actions.**

15           This is not a class action.

16           **10. Related Cases.**

17           There are no related cases pending in this Court. Jeans City believes that LS&CO.'s  
18 prior and pending Complaints against third parties relating to the Arcuate Trademark and/or Tab  
19 Trademarks are relevant to its claims and defenses.

20           **11. Relief.**

21           Pursuant to 15 U.S.C. § 1117(a), LS&CO. will seek damages in the amount of Jeans  
22 City's profits from the sale of infringing goods or, alternatively a reasonable royalty. Given that  
23 discovery with respect to damages has not yet begun, LS&CO. is unable to compute damages at  
24 this time. LS&CO. may seek recovery of additional statutory penalties and punitive damages,  
25 and recovery of its attorneys' fees in the event that Jeans City's conduct was willful. LS&CO.'s  
26 complaint also seeks injunctive relief. Jeans City will seek recovery of all its costs and fees  
27 incurred in defense of this action.

28       ///

1           **12. Settlement and ADR.**

2           The parties request referral to mediation as their ADR process.

3           **13. Consent to Magistrate Judge For All Purposes.**

4           The parties do not believe the case is suitable for a magistrate judge and have elected to  
5 have the case heard by a trial judge.

6           **14. Other References.**

7           The parties do not believe the case is suitable for reference to binding arbitration, a  
8 special master, or to the Judicial Panel on Multidistrict Litigation.

9           **15. Narrowing of Issues.**

10          The parties do not believe that the issues in dispute can be narrowed.

11          **16. Expedited Schedule.**

12          The parties do not believe that this type of case can be handled on an expedited basis  
13 with streamlined procedures.

14          **17. Scheduling.**

15          The parties propose the following discovery and court dates:

16	Fact Discovery Cutoff:	January 30, 2009
17	Expert Disclosures:	February 29, 2009
18	Rebuttal Expert Disclosures:	March 20, 2009
19	Expert Discovery Cut-off:	April 13, 2009
20	Last Date for Filing of Dispositive Motions:	May 20, 2009 (to be heard June 18, 2009)
21	Final Pretrial Conference Date:	August 3, 2009
22	Trial Date:	August 17, 2009

23  
24          **18. Trial.**

25          The parties expect that the trial will last three to five court days. LS&CO. has demanded  
26 a jury. The parties do not believe bifurcation is a viable alternative in this case.

27          **19. Disclosure of Non-party Interested Entities or Persons.**

28          LS&CO. has filed the "Certification of Interested Entities or Persons" required by Civil

1 Local Rule 3-16 certifying that other than the named parties there are no other interested entities  
2 or persons. Jeans City certifies that other than the named parties there are no other interested  
3 entities or parties.

4 **20. Other Items.**

5 None.

6  
7 DATED: July 17, 2008

Respectfully submitted,

8  
9 By: /s/ Raquel Pacheco  
10 Raquel Pacheco  
11 TOWNSEND AND TOWNSEND AND CREW  
12 LLP  
13 Attorneys for Plaintiff  
14 LEVI STRAUSS & CO.

15 DATED: July 17, 2008

16 By: /s/ Rachel R. Davison  
17 Rachel R. Davison  
18 K&L GATES  
19 Attorneys for Defendant  
20 JEANS CITY USA, INC.  
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**GENERAL ORDER ATTESTATION**

Pursuant to General Order No. 45, Section X(B) regarding signatures, I, Raquel Pacheco attest that concurrence in the filing of this document has been obtained from Rachel R. Davison. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 17th day of July, 2008. at San Francisco, California.

/s/ Raquel Pacheco  
Raquel Pacheco

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**ORDER**

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order.

Dated: \_\_\_\_\_, 2008

\_\_\_\_\_  
THE HONORABLE WILLIAM ALSUP  
United States District Court Judge